Abdul Aziz bin Mohd Alias v Timbalan Ketua Polis Negara, Malaysia & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(F)-9 OF 2009(W)
ARIFIN ZAKARIA CJ (MALAYA), ZULKEFLI AND MOHD GHAZALI FCJJ
8 FEBRUARY 2010

Administrative Law — Rights and liabilities of public servants — Dismissal — Police disciplinary authority proceeding against police officer under reg 28 of the Public Officers (Conduct and Discipline) Regulations 1993 — Whether show cause notice issued to police officer had to specifically mention possible penalty of dismissal or reduction in rank — Police officer given full opportunity of stating his case and making representation — Whether such police officer as a public officer deemed to know rights under the Public Officers (Conduct and Discipline) Regulations 1993 — Whether such police officer deprived of constitutional rights — Whether in accord with principles of natural justice and procedural fairness — Federal Constitution art 135 — Public Officers (Conduct and Discipline) Regulations 1993 reg 28

Public Servants — Dismissal — Dismissal of police officer — Police disciplinary authority proceeding against police officer under reg 28 of the Public Officers (Conduct and Discipline) Regulations 1993 — Whether show cause notice issued to police officer had to specifically mention possible penalty of dismissal or reduction in rank — Police officer given full opportunity of stating his case and making representation — Whether such police officer as a public officer deemed to know rights under the Public Officers (Conduct and Discipline) Regulations 1993 — Whether such police officer deprived of constitutional rights — Federal Constitution art 135 — Public Officers (Conduct and Discipline) Regulations 1993 reg 28

Public Servants — Dismissal — Non-compliance of government circular — Duty of public servants to comply with government circulars and rules — Whether such duty of compliance showed public servant's appreciation of the Public Officers (Conduct and Discipline) Regulations 1993 — Public Officers (Conduct and Discipline) Regulations 1993

The appellant was dismissed as a Chief Inspector of Police on charges under the Public Officers (Conduct and Discipline) Regulations 1993 ('the Regulations'). His claim for wrongful dismissal was dismissed with costs by

the High Court and his appeal to the Court of Appeal was also dismissed. The appellant obtained leave to appeal to the Federal Court. The issues for determination by the Federal Court were: (i) whether a public officer dismissed from service pursuant to reg 28(1) of the Regulations was presumed to know of his rights; (ii) whether the public officer concerned was required to appreciate the said 1993 Regulations and therefore the letter to show cause issued to such officer was not required to specifically mention the possibility of a dismissal or reduction in rank; and (iii) whether the failure to mention the possibility of a dismissal or reduction in rank in the show cause letter would cause such officer to be denied of his constitutional rights.

Held, dismissing the appeal with costs:

(1) In the instant case, it was clear that the appellant was aware from the contents of the show cause letter and his representation that the disciplinary authority ('DA') was proceeding against him under reg 28 of the Regulations with a view to his dismissal or reduction in rank. Further, the appellant himself in his representation had, inter alia, stated that he did not anticipate reg 28 of the Regulations would be invoked against him. The 1993 Regulations being a federal law and duly gazetted, by virtue of s 18(2) of the Interpretation Act its publication would constitute sufficient notice to the appellant of any matter under the 1993 Regulations. Therefore, the appellant as a public officer dismissed from service pursuant to reg 28(1) of the 1993 Regulations, was presumed to know of his rights under the 1993 Regulations (see paras 11 & 12); *Public Prosecutor v Koo Cheh Yew & Anor* [1980] 2 MLJ 235 followed; *Krishnasamy and Others v DC Butler Madden* [1947] MLJ 182 distinguished.

(2) Regulation 18 of the General Orders Chapter A (Appointment and Promotions) 1973 provides that every public servant is required to comply with any circular and rules issued by the government from time to time. This requirement of compliance with government circulars and rules clearly showed that the public officer concerned is required to appreciate the Regulations. In the instant case, the appellant had made a full representation in his letter of reply to the show cause letter and had shown that he was aware of the sentence that could be meted out against him (see para 17); *Government of Malaysia v Rosalind Oh Lee Pek Inn* [1973] 1 MLJ 222 followed; *Inspector-General of Police & Anor v Alan Noor bin Kamat* [1988] 1 MLJ 260 distinguished.

(3) There is a distinction between proceedings under reg 27 and reg 28 of the 1993 Regulations. Regulation 27 encompasses procedures in disciplinary cases 'not with a view to dismissal or reduction in rank', whereas reg 28 is invoked where the DA is of the view that the case merits a dismissal or reduction in rank. The discretion as to which

punishment under reg 38 is to be imposed on the officer remains with the DA as provided by reg 28(2). In the instant case, the appellant was dismissed on five charges but was given a warning on two charges. The Court of Appeal was thus correct when it stated that reg 28(1) had to be read with reg 28(2) in view of the fact that reg 28(2) gave the discretion to the DA to impose a lesser sentence that was appropriate under reg 38. This was evident by the fact that the DA imposed a lesser sentence under reg 38(a) for two charges, consistent with reg 28(2) (see para 19).

(4) The respondents' submission that since the issue raised under question 2 was not decided by both the High Court and the Court of Appeal, the Federal Court ought not to answer the question, ought to be rejected. It was clear that the High Court and the Court of Appeal had decided on the issue raised (see para 20); *Dataran Rentas Sdn Bhd v BMC Construction Sdn Bhd* [2009] 3 CLJ 125 referred.

(5) In the instant case, under art 135(2) of the Federal Constitution ('Constitution'), the appellant had been given reasonable opportunity of being heard. He had given full opportunity to state his case on all the charges framed against him. The reasonable opportunity of being heard in art 135(2) of the Constitution does not require the DA to inform the appellant of the possible punishment likely to be imposed on him as a public officer. In any event, in the instant case the reference to reg 28 of the 1993 Regulations in the show cause letter, gave notice to the appellant that the most severe punishment, that is dismissal, was one of the options available to the disciplinary authority together with other punishments under reg 38 (see paras 21 & 22).

(6) The instant case was not an appropriate one to revisit the case of *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* on its construction of the expression 'life' under art 5(1) of the Constitution (see para 23); *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72 (FC) referred.

(7) The General Orders which would include the Regulations, are in accord with the principles of natural justice and procedural fairness (see para 24); *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417 (FC) followed.

[Bahasa Malaysia summary

Perayu dipecat dari jawatan Ketua Inspektor Polis atas tuduhan di bawah Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 ('Peraturan-Peraturan'). Tuntutannya terhadap pemecatan secara salah telah ditolak dengan kos oleh Mahkamah Tinggi dan rayuannya kepada Mahkamah Rayuan juga ditolak. Perayu memperoleh kebenaran untuk

merayu ke Mahkamah Persekutuan. Isu-isu untuk diputuskan oleh Mahkamah Persekutuan adalah: (i) sama ada pegawai awam yang dipecat dari perkhidmatan menurut peraturan 28(1) Peraturan-Peraturan dianggap mengetahui hak-haknya; (ii) sama ada pegawai awam berkenaan diperlukan untuk menghargai Peraturan-Peraturan 1993 tersebut dan oleh itu surat tunjuk sebab yang dikeluarkan kepada pegawai berkenaan tidak perlu secara spesifik menyatakan kebarangkalian pemecatan atau penurunan pangkat; dan (iii) sama ada kegagalan untuk menyatakan kebarangkalian pemecatan atau penurunan pangkat di dalam surat tunjuk sebab akan menyebabkan pegawai berkenaan dinafikan hak-hak perlembagaannya.

Diputuskan, menolak rayuan dengan kos:

(1) Di dalam kes ini, adalah jelas bahawa perayu tahu daripada isi surat tunjuk sebab dan rujukannya bahawa pihak berkuasa disiplin ('DA') meneruskan terhadapnya di bawah peraturan 28 Peraturan-Peraturan dengan niat untuk pemecatannya atau penurunan pangkatnya. Selanjutnya, perayu sendiri di dalam rujukannya telah, antara lain, menyatakan bahawa dia tidak menyangka peraturan 28 Peraturan-Peraturan akan dibangkitkan terhadapnya. Peraturan-Peraturan 1993 sebagai undang-undang persekutuan dan telah diwartakan, menurut s 18(2) Akta Tafsiran penerbitannya akan menjadi notis yang mencukupi kepada perayu mengenai apa-apa perkara di bawah Peraturan-Peraturan 1993. Oleh itu, perayu sebagai pegawai awam dipecat daripada perkhidmatan menurut peraturan 28(1) Peraturan-Peraturan 1993, dianggap mengetahui mengenai hak-haknya di bawah Peraturan-Peraturan 1993 (lihat perenggan 11 & 12); *Public Prosecutor v Koo Cheh Yew & Anor* [1980] 2 MLJ 235 diikut; *Krishnasamy and Others v DC Butler Madden* [1947] MLJ 182 dibeza.

(2) Peraturan 18 Perintah-Perintah Am Bab A (Pelantikan dan Kenaikan Pangkat) 1973 memperuntukkan bahawa setiap pengkhidmat awam diperlukan untuk mematuhi apa-apa pekeliling dan peraturan yang dikeluarkan oleh kerajaan dari masa ke semasa. Keperluan untuk pematuhan dengan pekeliling dan peraturan kerajaan jelas menunjukkan bahawa pegawai awam yang berkenaan diperlukan untuk menghargai Peraturan tersebut. Di dalam kes ini, perayu telah membuat representasi penuh di dalam surat jawapannya kepada surat tunjuk sebab dan telah menunjukkan bahawa dia mengetahui tentang hukuman yang boleh dijatuhkan terhadapnya (lihat perenggan 17); *Government of Malaysia v Rosalind Oh Lee Pek Inn* [1973] 1 MLJ 222 diikut; *Inspector-General of Police & Anor v Alan Noor bin Kamat* [1988] 1 MLJ 260 dibeza.

(3) Terdapat perbezaan di antara prosiding di bawah peraturan 27 dan peraturan 28 Peraturan-Peraturan 1993. Peraturan 27 merangkumi

prosedur dalam kes-kes disiplin 'not with a view to dismissal or reduction in rank', manakala peraturan 28 dibangkitkan apabila DA berpendapat bahawa kes tersebut mewajarkan pemecatan atau penurunan pangkat. Budi bicara mengenai hukuman di bawah peraturan 38 yang akan dikenakan ke atas pegawai tersebut terletak pada DA seperti yang diperuntukkan oleh peraturan 28(2). Di dalam kes ini, perayu dipecat atas lima tuduhan tetapi diberikan amaran atas dua tuduhan. Mahkamah Rayuan oleh itu betul apabila ia menyatakan bahawa peraturan 28(1) perlu dibaca dengan peraturan 28(2) melihat kepada fakta bahawa peraturan 28(2) memberikan budi bicara kepada DA untuk mengenakan hukuman yang lebih ringan yang wajar di bawah peraturan 38. Ini jelas daripada fakta bahawa DA mengenakan hukuman yang lebih ringan di bawah peraturan 38(a) untuk dua tuduhan, yang konsisten dengan peraturan 28(2) (lihat perenggan 19).

(4) Hujahan responden bahawa oleh kerana isu yang dibangkitkan di bawah soalan 2 tidak diputuskan oleh kedua-dua Mahkamah Tinggi dan Mahkamah Rayuan, Mahkamah Persekutuan tidak patut menjawab soalan tersebut, perlu ditolak. Adalah jelas bahawa Mahkamah Tinggi dan Mahkamah Rayuan telah memutuskan atas isu yang dibangkitkan (lihat perenggan 20); *Dataran Rentas Sdn Bhd v BMC Construction Sdn Bhd* dirujuk.

(5) Di dalam kes ini, di bawah perkara 135(2) Perlembagaan Persekutuan ('Perlembagaan'), perayu telah diberikan peluang yang munasabah untuk didengar. Dia telah diberikan peluang yang penuh untuk menyatakan kesnya atas kesemua tuduhan yang dikenakan ke atasnya. Peluang munasabah untuk didengar di dalam perkara 135(2) Perlembagaan tidak memerlukan DA memberitahu perayu mengenai hukuman yang mungkin dikenakan ke atasnya sebagai pegawai awam. Walau bagaimanapun, di dalam kes ini rujukan kepada peraturan 28 Peraturan-Peraturan 1993 di dalam surat tunjuk sebab, memberikan notis kepada perayu mengenai hukuman yang paling tinggi, iaitu pemecatan, adalah salah satu pilihan yang terdapat untuk DA bersama dengan lain-lain hukuman di bawah peraturan 38 (lihat perenggan-perenggan 21 & 22).

(6) Kes ini tidak sesuai untuk membuka semula kes *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* bagi pentafsiran perkataan 'life' di bawah perkara 5(1) Perlembagaan (lihat perenggan 23); *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72 (MP) dirujuk.

(7) Perintah Awam yang termasuk Peraturan-Peraturan, selari dengan prinsip keadilan semulajadi dan keadilan prosedur (lihat perenggan 24); *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417 (MP) diikut.]

Notes

For cases on dismissal, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 732–766.

For cases on dismissal of police officer, see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) paras 1912–1916.

For cases on non-compliance of government circular, see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) para 1932.

Cases referred to

Dataran Rentas Sdn Bhd v BMC Construction Sdn Bhd [2009] 3 CLJ 125, FC (refd)

Deputy Chief Police Officer, Perak & Anor v Ramesh a/l Thangaraju [2001] 1 MLJ 161, CA (refd)

Government of Malaysia v Rosalind Oh Lee Pek Inn [1973] 1 MLJ 222 (folld)

Inspector-General of Police & Anor v Alan Noor bin Kamat [1988] 1 MLJ 260, SC (distd)

Krishnasamy and Others v DC Butler Madden [1947] MLJ 182 (distd)

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal [2001] 2 MLJ 417; [2001] 2 CLJ 525, FC (folld)

Najar Singh v Government of Malaysia & Anor [1976] 1 MLJ 203, PC (refd)

Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan [2002] 3 MLJ 72, FC (refd)

PP v Koo Cheh Yew & Anor [1980] 2 MLJ 235, FC (folld)

Legislation referred to

Courts of Judicature Act 1964 s 96(a)
Federal Constitution arts 5(1), 8(1), 135(2)
General Orders Chapter A (Appointment and Promotions) 1973 reg 18
Interpretation Acts 1948 and 1967 s 18(2)
Public Officers (Conduct and Discipline) Regulations 1993 regs 27, 28, 28(1), (2), (3), 38, 38(a), (g)
Specific Relief Enactment s 45

Appeal from: Civil Appeal No W-01–29 of 2004 (Court of Appeal, Putrajaya)

Karpal Singh (Sanjeet Kaur & G Subramaniam Nair with him) (Karpal Singh & Co) for the appellant.

Azizah Nawawi (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Zulkefli FCJ (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the Court of Appeal in dismissing the appellant's appeal against the decision of the High Court at Kuala Lumpur dated 15 December 2005. The relevant background facts of the case are as follows:

(a) The appellant was formerly a Chief Inspector of Police with the police force.

(b) By way of a show cause letter dated 5 February 1997, disciplinary proceeding was initiated by the first respondent against the appellant on seven charges under the Public Officers (Conduct and Discipline) Regulations 1993 ('the 1993 Regulations') (see pp 79–83 of the Appeal Record (Vol II)).

(c) The appellant made his representation to the said show cause letter in a letter dated 17 March 1997 (see pp 84–90 of the Appeal Record (Vol II)).

(d) The appellant was informed on 25 April 1997 that the first respondent had found the appellant guilty on all the seven charges and the punishment was dismissal under reg 38(g) on charges No (1), (2), (4), (5) and (6) of the 1993 Regulations. The appellant was given a warning on charges No (3) and (7) under reg 38(a) of the 1993 Regulations (see pp 91–93 of Appeal Record (Vol II)).

(e) On 30 May 2000, the appellant instituted legal proceedings at the High Court in Kuala Lumpur against the respondents for wrongful dismissal.

(f) On 15 December 2005 the learned judge of the High Court dismissed the appellant's claim with costs.

(g) On 7 November 2008 the Court of Appeal dismissed the appellant's appeal against the decision of the High Court dated 15 December 2005.

(h) On 11 May 2009, the Federal Court granted leave to the appellant to appeal against the decision of the Court of Appeal dated 7 November 2008 on the following questions:

(1) Whether a public officer dismissed from service pursuant to reg 28(1) of the 1993 Regulations is presumed to know of his rights and whether the public officer concerned is required to appreciate the said 1993 Regulations and therefore the letter to show cause is not required, to have in it, specific mention of possible penalty of dismissal or reduction in rank; and

(2) Whether a public officer who is denied in the show cause letter communication of possible imposition of dismissal or reduction in rank is denied his constitutional rights under art 135(2) of the Federal Constitution and art 5(1), read with art 8(1) of the Federal Constitution.

THE APPELLANT'S CONTENTION

[2] We noted that there are essentially two main grounds of appeal relied on by learned counsel for the appellant in the arguments made before us as follows.

[3] Firstly, it was contended for the appellant that the Court of Appeal was wrong in concluding that the appellant was presumed to have known of his rights and, therefore, should have appreciated the effect of reg 28(1) of the said 1993 Regulations. It is the appellant's case that the Court of Appeal was wrong in finding that the first respondent was not required to have included in the show cause letter dated 5 February 1997 sent to the appellant specific mention of a possible penalty of dismissal or reduction in rank. In support of the appellant's contention on this point the case of *Krishnasamy and Others v DC Butler Madden* [1947] MLJ 182 was referred to us wherein Evans J had occasion to consider the issue on the presumption that one knows of one's rights at p 193 as follows:

> The law in this case is, in part, to be found in *Gazette* Notification No 80 and is subject to 'such orders and directions as they may from time to time receive from the Food Controller'. Whatever these words mean I do not exactly know, but they seem to make, if valid, the Assistant Food Controller's legal powers quite unknowable or known only to the Controller himself. The rule has always been qualified by the consideration that there are difficult and doubtful points of law. Moreover, as Lord Atkin said in *Evans v Bartlam* [1937] AC 473 (HL):
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> > For my part I am not prepared to accept the view that there is in law any presumption that anyone, even a judge, knows all the rules and orders of the Supreme Court. The fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application. I do not see its application here.

[4] Secondly, it was contended for the appellant that the Court of Appeal was wrong in not concluding that the appellant, who had not been informed in the show cause letter of a possible imposition of dismissal or reduction in rank, had been denied of his constitutional rights under art 5(1), art 8(1) and art 135(2) of the Federal Constitution:

Article 5(1) of the Federal Constitution states:

A 5(1) No person shall be deprived of his life or personal liberty save in accordance with law.

Article 8(1) of the Federal Constitution states:

B 8(1) All persons are equal before the law and entitled to the equal protection of the law.

Article 135(2) of the Federal Constitution states:

C 135(2) No member of such service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

[5] On the issue of the denial of the appellant's constitutional rights learned Counsel for the appellant referred to us the case of *Deputy Chief Police Officer, Perak & Anor v Ramesh a/l Thangaraju* [2001] 1 MLJ 161 wherein in D delivering the judgment of the Court of Appeal, Gopal Sri Ram JCA (as he then was), at pp 165 and 166, distilled the principles relating to procedural and substantive fairness in the following passages:

E It is, I think, settled beyond argument that procedural and substantive fairness are constitutionally guaranteed by the Federal Constitution. The cumulative operation of arts 5(1) and 8(1) of the Federal Constitution ensures this.

We have since jettisoned the narrow approach that hitherto held the field. A number of our decisions have conferred a broad and liberal interpretation upon arts 5(1) and 8(1). See *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261; *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and Another Appeal* [1996] 1 MLJ 481. The latter art in particular has the effect of ensuring fairness in all forms of state action and is of wide sweep. Then came the landmark decision of the present Federal Court in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145. Edgar Joseph Jr FCJ in a judgment of cardinal importance established that fairness included not only procedural fairness but substantive fairness as well. That decision marks the high level watermark in our administrative law jurisprudence.

[6] Although in *Tan Tek Seng* the issue relating to the expression 'life' in H art 5(1) was overruled in *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72, learned counsel for the appellant submitted that this court should take the opportunity to revisit *Sugumar* and adopt the exposition of 'life' in its wider context in *Tan Tek Seng* and not restrict it only to personal liberty as was done in *Sugumar*.

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[7] Learned counsel for the appellant further submitted that on the application of the principles relating to procedural and substantive fairness, the decision of the Supreme Court in the case of *Inspector-General of Police & Anor v Alan Noor bin Kamat* [1988] 1 MLJ 260 which is of wider and

significant import should be given due consideration by this court in evaluating the present case of the appellant. The show cause letter dated 5 February 1997 from the first respondent to the appellant in the second paragraph contained, inter alia, the following statement:

> Timbalan Ketua Polis Negara, setelah menimbangkan laporan itu, telah mendapati bahawa anda patut dikenakan tindakan tatatertib di bawah Peraturan 28 Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

[8] On the above statement it was submitted for the appellant that without adverting to dismissal or reduction in rank and having regard to the appellant ultimately being punished with dismissal on charges No (1), (2), (4), (5) and (6) and with a warning on charges No (3) and (7), the said show cause letter, clearly, falls foul of the ratio decidendi in *Alan Noor* having regard to the following passage in the judgment of the Supreme Court at p 262 as follows:

> … the show cause letter dated 14 May 1980 was completely silent as to the contemplated punishment to be imposed at the end of the disciplinary proceedings. Therefore, in order to ensure that the respondent understood and appreciated the seriousness of the proceedings he was facing, the learned trial judge was right in insisting that another chance must be given to him, which he called a plea of mitigation. If, however, the show cause letter had included the proposed punishment, for example, by the inclusion of such statement as 'This proceeding is taken against you with a view to dismissal or reduction in rank …, or such other phraseology as would give effect of making the respondent understand the nature of the proceedings and what they would lead to

DECISION

[9] We shall first deal with question 1 posed for our determination in this appeal. There are two limbs to this question. Under the first limb it raises the question of whether a public officer dismissed from service pursuant to reg 28(1) of the 1993 Regulations is presumed to know of his rights. Under the second limb it raises the question of whether the public officer concerned is required to appreciate the said 1993 Regulations and therefore, the letter to show cause is not required to have in it specific mention of a possible penalty of dismissal or reduction in rank.

[10] Regulation 28(1), (2) and (3) of the 1993 Regulations provide as follows:

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> (1) The appropriate Disciplinary Authority sitting to consider a case where the breach of discipline complained of has been found to be of a nature which merits a punishment of dismissal or reduction in rank shall consider all the

available information and where it appears that there is a prima facie case against the officer for dismissal or reduction in rank, the appropriate Disciplinary Authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall call upon him to make a written representation, containing grounds upon which he relies to exculpate himself, within a period of not less than twenty-one days from the date of receipt of the charge.

(2) Where after considering the representation made pursuant to subregulation (1), the appropriate Disciplinary Authority is of the opinion that the breach of discipline or misconduct by the officer does not merit the punishment of dismissal or reduction in rank, the appropriate Disciplinary Authority may impose on the officer any lesser punishment as it deems fit and proper.

(3) If the officer does not furnish any representation within the period specified in subregulation (1), or if the officer furnishes a representation which does not exculpate himself to the satisfaction of the appropriate Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

[11] Under reg 28 of the 1993 Regulations the disciplinary authority is required to first determine that there is a prima facie case against the officer for dismissal or reduction in rank. Having found there is a prima facie case against the officer, the disciplinary authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall called upon him to state in writing, within a period of twenty one days from the date of receipt of the show cause letter, a representation containing grounds which the officer relies to exculpate himself. It is clear in the present case that the appellant was aware from the contents of the show cause letter sent to him and his representation that the disciplinary authority was proceeding against him under reg 28 of the 1993 Regulations with a view to dismissal or reduction in rank. This finding is fortified by the fact that the appellant in his representation to the show cause letter had amongst others stated that he took the risks of flouting with the rules but did not anticipate that reg 28 of the 1993 Regulations would be invoked against him.

[12] It is also to be noted that the 1993 Regulations is a federal law and duly gazetted under PU(A) 395. As it is a law duly gazetted, the public are deemed to have notice of the same. Therefore in our view in the present case the appellant as a public officer dismissed from service pursuant to reg 28(1) of the 1993 Regulations is presumed to know of his rights under the 1993 Regulations. On this point useful reference may be made to s 18(2) of the Interpretation Acts 1948 and 1967 ('the Interpretation Act') which states:

18(2) Publication in the official *Gazette* of Malaysia shall constitute sufficient notice of any matter required to be published in the *Gazette* by or under any federal law or required to be published in the Sabah Government *Gazette* or the Sarawak Government *Gazette* by or under any enactment of those States which has been declared to be a federal law.

[13] In the case of *Public Prosecutor v Koo Cheh Yew & Anor* [1980] 2 MLJ 235, the Federal Court in discussing the application of s 18(2) of the Interpretation Act, inter alia, at pp 239 and 240 stated as follows:

The proper interpretation of statute by the courts requires the application of enacted law. In our view, s 135(2) must be fully considered in the determination of the guilt or otherwise of the appellants. We consider that this subsection is in amplification and not in derogation of the publication in the *Gazette*. *In the ordinary law, this publication (which is common ground) not merely affords the public in general and the appellants in particular 'a practical and sensible way' in which they could ascertain the ban on importation of goods originating from South Africa, but also constitutes sufficient notice of the ban: s 18(2) Interpretation Act 1967 (Rep 1973).* And this rule as to notice by publication is to our mind reinforced by s 135(2), so that we do not accept with respect the suggestion that the principle of expressio unius exclusio alterius applies. Whereas ordinarily the law presumes that the notice of the public has been sufficiently drawn to the ban by publication in the *Gazette*, s 135(2) now establishes more positively and as a fact that this ban is to the knowledge of the appellants …

… *In other words, if the law fixes the public with knowledge and deems the knowledge to be a fact and if as we have postulated, common sense and ordinary prudence and public policy require that every individual should so conduct himself as to keep at all times within the law*… (Emphasis added.)

[14] As regards the case of *Krishnasamy and Others v DC Butler Madden* cited for the appellant to support his contention that he cannot be presumed to know of his rights under the 1993 Regulations, we are of the view based on the facts, the case of *Krishnasamy* can be distinguished from the present case. The principle of law laid down in *Krishnasamy*'s case therefore cannot be applied to the present case of the appellant. In *Krishnasamy*'s case there was an application made by the appellants for an order under s 45 of the Specific Relief Enactment directed to the respondent who is the Assistant Food Controller to withdraw the cancellation of the appellants' retail licenses earlier issued to the appellants in February 1947. The licenses purported to be given by the Food Controller were signed by the respondent. They were limited to expire on 31 December 1947. At various dates between 12 March 1947 and 18 March 1947 the appellants received a letter from the respondent informing each of them that their licenses were withdrawn. No notice of objection to their licenses or a proposal to withdraw was given to the appellants. It was held by the High Court, inter alia that: (1) the *Gazette* Notification No 80 of 1945 which purports to delegate certain powers to the

Assistant Food Controller does not delegate to the Assistant Food Controller powers other than executive powers which can be exercised under the direction of a superior; (2) that although s 12(2) of the Food Control Proclamation gives power to the Controller to revoke license 'without any reason assigned' the Food Controller must in doing so exercises his discretion properly and fairly; and (3) the appellants cannot be presumed to know of the Food Controller's powers under the said *Gazette* Notification No 80 of 1945 and the respondent cannot rely on it to deny the appellants' rights. The cancellation of the appellants' licenses in this case was illegal and an order under s 45 of the Specific Relief Enactment should be issued.

[15] Unlike the appellants in the case of *Krishnasamy*, who were holders of retail licenses, in the present case the appellant is a public officer in the government service wherein he is placed in a position of an employee-employer relationship and facing a disciplinary proceeding initiated by his employer against him. We are of the view since the 1993 Regulations have been duly gazetted under PU(A) 395, by virtue of s 18(2) of the Interpretation Act its publication shall constitute sufficient notice to the appellant of any matter under the 1993 Regulations. It therefore follows that the appellant as a public officer is presumed to know of his rights under the 1993 Regulations.

[16] On the issue of whether the public officer concerned is required to appreciate the said 1993 Regulations, it has to be stated here that the contractual status of a public servant and the government is a special one, whereby the rights and obligations are determined by statutes or administrative rules made by the government. Suffian FJ (as he then was) on this issue in the case of *Government of Malaysia v Rosalind Oh Lee Pek Inn* [1973] 1 MLJ 222 at p 224 made the following observation:

> I should add that the contract between a public servant such as the plaintiff and the government is of a very special kind, for as was stated by Ramaswami J at p 1894 when delivering the judgment of the Indian Supreme Court in *Roshan Lal v Union of India* AIR 1967 SC 1889:
>
> > It is true that the origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by government … The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties.

[17] It can be noted from the above case that the rights and obligations of the public servants are determined by statutes or administrative rules.

Regulation 18 of the General Orders Chapter A (Appointment and Promotions) 1973 in fact provides that every public servant is required to comply with any circular and rules issued by the government from time to time. This requirement of compliance with government circulars and rules clearly shows that the public officer concerned is required to appreciate the said 1993 Regulations. We are therefore of the view the Court of Appeal is correct in its judgment when it stated, inter alia, that the appellant had made a full representation in its letter of reply to the show cause letter and had shown that he was aware of the sentence that can be meted out against him.

[18] As regards the case of *Alan Noor* relied on by the appellant, we are of the view the case of *Alan Noor* can be distinguished from the present case. In the show cause letter in *Alan Noor* it did not state the sentence that can be imposed. In the present case the appellant was given sufficient notice of the sentence that can be imposed on him because the show cause letter clearly stated that the proceeding was conducted under reg 28 of the 1993 Regulations. Regulation 28 of the 1993 Regulations specifically deals with a disciplinary case with a view to dismissal or reduction in rank. Furthermore, in the same show cause letter it was mentioned that if the appellant was found guilty for any of the seven charges, he was liable to be punished under reg 38 of the 1993 Regulations, which is a punishment provision.

[19] It should be noted that there is a distinction between proceedings taken under reg 27 and reg 28 of the 1993 Regulations. Regulation 27 encompasses procedures in disciplinary cases 'not with a view to dismissal or reduction in rank', whereas reg 28 is invoked where the disciplinary authority is of a view that the disciplinary case merits a punishment of dismissal or reduction in rank. However, the discretion as to which punishment under reg 38 is to be inflicted on the officer remains with the disciplinary authority as provided by regulation 28(2). In the present case, the appellant was dismissed on five charges but was given a warning on two charges. It is our considered view that the Court of Appeal is correct when it stated that the provision of reg 28(1) has to be read with reg 28(2) in view of the fact that reg 28(2) gives the discretion to the disciplinary authority to impose a lesser sentence that is appropriate under reg 38. This is evident by the fact that the disciplinary authority imposed a lesser sentence under reg 38(a) for the charges No 3 and No 7 consistent with the provision of reg 28(2).

[20] We shall now deal with question 2 posed for our determination in this appeal. Learned counsel for the respondents submitted that the issue raised under question 2 was not decided by both the High Court and the Court of Appeal. Therefore the question framed for our determination does not come within the ambit of s 96(a) of the Courts of Judicature Act 1964 and this Court should not answer the question posed. The Federal Court's case of

Dataran Rentas Sdn Bhd v BMC Construction Sdn Bhd [2009] 3 CLJ 125 was cited for the respondents to support their contention. With respect, we do not agree with the respondents' contention on this point. Having considered the appellant's case in its entirety it is clear that both question 1 and question 2 relate to the show cause letter. The issue raised is whether in the show cause letter issued by the first respondent to the appellant there is a communication of a possible imposition of dismissal or reduction in rank. The further connected issue is whether in the absence of such a communication the appellant can be regarded to have been denied of his constitutional rights. In our view both the High Court as well as the Court of Appeal in the present case had decided on the issues raised. The contention of the respondents on this point is therefore rejected.

[21] Reverting back to question 2 and on the issue of whether the appellant in this case had been denied of his constitutional rights or not, it is our considered view under art 135(2) of the Federal Constitution the appellant had been given a reasonable opportunity of being heard. The appellant had a full opportunity to state his case on all the charges framed against him. The Federal Court on this issue in the case of *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417; [2001] 2 CLJ 525 had cited with approval what the Privy Council said in *Najar Singh v Government of Malaysia & Anor* [1976] 1 MLJ 203 which explained the words 'being heard' at p 205 as follows:

> In this passage which was cited by counsel on behalf of the appellant, in the context shows that the words 'being heard' meant 'being heard orally' but this passage is no support for the proposition that unless there is an oral hearing, there is a denial of natural justice. Indeed it points in the opposite direction. What is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed. The Chapter D Regulations 1969 provided this and the appellant availed himself of the opportunity, though the contents of his representation were not disclosed, their Lordship are unable to say whether he presented a case of substance.

[22] We are of the view it must also be taken to mean that the reasonable opportunity of being heard in art 135(2) of the Federal Constitution does not require the disciplinary authority to inform the appellant of the possible punishment likely to be imposed on him as a public officer. In any event in the present case the reference to reg 28 of the 1993 Regulations in the show cause letter itself gives notice to the appellant the most severe punishment, that is a dismissal from service is one of the options available to the disciplinary authority together with other punishment such as a warning and other punishments in reg 38.

[23] On the submission of learned counsel for the appellant that this court should take the opportunity through the present case to revisit the case of *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishan* and expressed its views on the issue relating to the expression 'life' in art 5(1) of the Federal Constitution wherein in the case of *Tan Tak Seng* the court adopted the exposition of 'life' in its wider context and not restricting it only to personal liberty as was done in *Sugumar*, we are of the view that it would not be appropriate on the facts of the present case for us to do so. Even if we were to engage ourselves in the arguments of whether the Federal Court then in the case of *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* was correct in its decision it would still not assist us in determining the real issues before us in the present case. Perhaps in a more appropriate case and with a bigger members bench of this court the issue on the 'revisit' of *Sugumar* can be taken up and the right approach to constitutional interpretation of art 5(1) be left decided by this apex court.

[24] On the requirement for the provisions in any disciplinary procedure or regulations such as the 1993 Regulations to comply with the principles relating to procedural and substantive fairness guaranteed under arts 5(1) and 8(1) of the Federal Constitution as contended by learned counsel for the appellant, we only need to state here that the Federal Court in *Lembaga Tatatertib Perkhidmatan Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal*had already decided that the general orders which in our view would include the 1993 Regulations are in accord with the principles of natural justice and procedural fairness wherein at p 551 it had this to say:

> Taking all the above into consideration, we are of the view that the general orders, in detailing the procedure therein, have sufficiently complied with art 135(2) of the Federal Constitution and, in the process, are in accord with the concept of natural justice and procedural fairness.

CONCLUSION

[25] For the reasons above stated the answer to question 1 must be in the positive and the answer to question 2 must be in the negative. The appeal is therefore dismissed with costs. Deposit is to be paid to the respondents on account of taxed costs.

Appeal dismissed with costs.

Reported by Andrew Christopher Simon